

D.P.U. 92-144

Petition of Concord Energy Corporation requesting the Department of Public Utilities, acting generally pursuant to 220 C.M.R. §§ 8.00 et seq., and specifically pursuant to 220 C.M.R. § 8.07(2), declare Concord to be the winner of the Boston Edison Company RFP 3.

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I. INTRODUCTION

A. Procedural History

On January 31, 1992, Concord Energy Corporation ("Concord") submitted a project proposal in Boston Edison Company's ("BECO's" or "Company's") third request for proposals ("RFP 3") from non-utility generators ("NUGs").¹ On June 9, 1992, Concord filed a petition ("Petition") with the Department of Public Utilities ("Department"), pursuant to 220 C.M.R. § 8.07(2), which asked the Department to declare Concord's proposal the winner of RFP 3. Concord's Petition alleges that BECO inappropriately scored Concord's bid, reducing its total points in the evaluation process. Concord asserts that BECO's actions (1) violated BECO's obligations under the Department's regulations at 220 C.M.R. §§ 8.00 et seq., (2) were based on clear errors in BECO's understanding of Concord's proposal, (3) were unreasonable, (4) were contradicted by Concord's proposal, and (5) represented unfair and deceptive trade practices under G.L. c. 93A, §§ 2 and 11 (Petition at 2).

On June 24, 1992, Altresco Financial, Inc. ("Altresco") filed a petition for leave to intervene in this docket.² On June 26, 1992, Concord filed an initial response to the Department's June 24, 1992 Order in D.P.U. 92-130-1, which set a final date to file complaints about BECO's selection of the RFP 3 award group, accompanied by an affidavit of Robert Place ("Place Affidavit"). On July 10, 1992, the Department issued an Order of Notice in the instant proceeding that (1) set July 15, 1992 as the deadline to file a petition for

¹ Concord submitted a proposal to sell the power from a 118 megawatt ("MW") gas-fired combined cycle generating unit.

² Altresco submitted a proposal in response to RFP 3 to sell power from a 132 MW natural gas-fired combined cycle unit in Lynn, Massachusetts.

leave to intervene in this docket, (2) established requirements for filing an answer or response to Concord's Petition, and (3) set July 24, 1992 as the date to file any such answer or response. On July 10, 1992, the Attorney General of the Commonwealth ("Attorney General") filed a notice of intervention pursuant to G.L. c. 12, § 11E. On July 15, 1992, CMS Generation Co. and Montvale Energy Associates, L.P. ("CMS") filed a petition for leave to intervene.³ On July 16, 1992, Novalta Resources Inc. ("Novalta") filed a petition for leave to intervene.⁴ On July 23, 1992, the Hearing Officer issued a ruling (1) denying the petition to intervene of Al tresco, (2) granting Al tresco limited participant status to address the legal issues raised in this docket, and (3) denying the petitions of CMS and Novalta to intervene in this case.

On July 24, 1992, Al tresco filed an Answer in support of BECo's scoring of Concord's proposal. On July 28, 1992, BECo filed its answer ("BECo Answer") to Concord's Petition, accompanied by a Memorandum in Opposition to Concord's Petition ("BECo Memorandum") and affidavits of William P. Killgoar ("Killgoar Affidavit") and John J. Reed.⁵ On July 30, 1992, the Hearing Officer issued a notice that Concord could

³ CMS also submitted a proposal in RFP 3.

⁴ Novalta is a supplier of natural gas and is affiliated with Concord.

⁵ Also on July 24, 1992, Al tresco filed a motion for summary judgment. On July 28, 1992, Al tresco appealed to the full Commission on the Hearing Officer's July 23, 1992 ruling denying Al tresco's petition to intervene. On July 30, 1993, Concord responded to Al tresco's appeal, to which Al tresco responded on July 31, 1993. Because of the Department's disposition in this case, the Department need not rule on the appeal of the Hearing Officer's ruling or the motion for summary judgment. We make no further findings regarding Al tresco's status as a party or limited participant in this proceeding. Moreover, in light of our decision to reject the subject Petition, we expressly do not reach the issue of whether limited participants may file motions for summary judgment.

respond to BECo's Answer no later than August 6, 1992. On August 5, 1992, Concord filed the affidavits of Robert E. Reilly and Daniel J. Lupfer ("Lupfer Affidavit"), and a second affidavit by Robert Place, in response to BECo's Answer ("Place Response Affidavit"). On August 6, 1992, Concord filed a response to BECo's Answer and Al tresco's Answer.

B. Background on BECo's RFP 3

Pursuant to approval by the Department, BECo issued its RFP 3 on October 11, 1991.⁶ By January 31, 1992, the response deadline for proposals in RFP 3, BECo received 41 project proposals for a total of 3,300 MW.

On May 20, 1992, BECo petitioned the Department to defer further activities in RFP 3 to its first integrated resource management ("IRM") proceeding,⁷ and in particular to defer announcing the award group and negotiating purchased power contracts with award group members. On June 1, 1992, BECo announced that it had selected the Al tresco Lynn project proposal as the sole member of the RFP 3 award group. On June 2, 1992, the Department ordered BECo to announce the award group but granted a temporary stay of BECo's obligation to negotiate and execute a purchase power contract with the RFP 3 award group. Boston Edison Company, D.P.U. 90-130-1, at 11, 13 (1992). During the following

⁶ As issued, BECo's RFP 3 provided for a tentative supply block within the range of 132 MW to 306 MW. Boston Edison Company, D.P.U. 90-270, at 35 (1991). The Department later set the size of the final supply block at 132 MW. Boston Edison Company, D.P.U. 90-270-C at 4 (1992).

⁷ On July 24, 1992, the Attorney General filed a letter in this docket that recommended that BECo's "RFP 3 bidders submit new bids relying on (after Commission review) updated BECo avoided costs." The issue regarding the filing of new bids with updated cost information was resolved by the Department's recent decision in Boston Edison Company, D.P.U. 92-130 (1993), by requiring BECo to negotiate with the award group based on the existing project proposals.

month, Concord and three other project sponsors⁸ submitted petitions to the Department, generally claiming that their bids were improperly scored, thereby challenging BECo's designation of Altresco as the sole award group member. In addition, two other project sponsors⁹ filed petitions with the Department because of BECo's decision to disqualify their bids.

On June 25, 1993, the Department issued an Order denying BECo's May 20, 1992 petition to defer further activities in RFP 3. Boston Edison Company, D.P.U. 92-130 (1993). The Department required BECo to begin negotiating a purchase power contract with the RFP 3 award group but suspended BECo's obligation to execute a contract with the RFP 3 award group until the Department issues final orders in the proceedings involving challenges to the rankings in BECo's RFP 3. Id. at 33-34.

On June 30, 1993, BECo filed with the Department a motion for immediate stay of the Department's June 25, 1993 Order in D.P.U. 92-130. In an Order dated July 14, 1993, the Department denied this motion. Boston Edison Company, D.P.U. 90-130-A (1993). Also on July 14, 1993, BECo filed an appeal of the Department's June 25, 1993 Order with the Massachusetts Supreme Judicial Court.

II. STANDARD OF REVIEW

The Department's regulations governing the purchase of power from NUGs state that

⁸ The three other proceedings regarding allegations of improper scoring are CMS Generating Company and Montvale Energy Associates, L.P., D.P.U. 92-166; Bio Development Corporation, D.P.U. 92-167; and Williams/Newcorp Generating Company, D.P.U. 92-146.

⁹ The two proceedings regarding disqualified bidders were DLS Energy, Inc., D.P.U. 92-153, and West Lynn Cogeneration, D.P.U. 92-142. West Lynn Cogeneration has since withdrawn its petition.

if, "at any time, a qualifying facility is aggrieved by an action of a utility pursuant to these regulations, the qualifying facility may petition the Department to investigate such action." 220 C.M.R. § 8.07(2). In reviewing any petition filed pursuant to 220 C.M.R. § 8.07(2), the Department applies a standard of "reasonableness." In Riverside Steam and Electric Company, D.P.U. 88-123, at 19-20 (1988), the Department stated

In reviewing the utility's actions, the Department will not substitute its own judgment for that of the utility so long as there is a reasonable basis for the utility's actions. Thus the Department will impose appropriate remedies only if it finds that, given what the utility knew or should have known at the time, its actions had no reasonable basis. Under 220 C.M.R. § 8.07(2), the burden of proof is on the aggrieved OF [qualifying facility].

Id. at 20; see also Destec Energy et al., D.P.U. 92-46, at 4-5 (1992) ("Destec"); EUA Power Corporation, D.P.U. 92-38, at 5 (1992); Riverside Steam and Electric Company, D.P.U. 88-123-B at 7, 50 (1991); and Boston Edison Company, D.P.U. 88-158, at 23 (1990).

Furthermore, the Department has recognized that in the management of its request for proposals ("RFP") process, an electric company is allowed a measure of discretion:

[I]n matters concerning an approved RFP, the Department will allow an electric company a measure of discretion in administering and managing the RFP process. Allowing a measure of discretion at this stage in the RFP process is appropriate in light of the Department's regulations [220 C.M.R. §§ 8.00 et seq.] governing other stages of the RFP process where explicit requirements for the content of an RFP and the solicitation and contracting processes are evident.

Destec at 13. In Destec, the Department reaffirmed its position that electric utility companies may use discretion in implementing the instructions and requirements of an RFP, but also indicated that an electric company must administer its RFP in a manner that prevents favoritism and treats all project sponsors equitably. Id. at 13-14.

Additionally, the Department must endeavor to ensure that an electric company's scoring system is applied in a manner that maximizes net benefits to ratepayers. See 220 C.M.R. § 8.05(5)(c). Therefore, in assessing the reasonableness of BECo's application of its scoring system, the Department will consider whether a scoring decision appropriately recognizes the actual benefits that a proposed project offers ratepayers.

III. RESCORING ISSUES

A. Introduction

Concord's project proposal indicated that it would design and build a 118 MW unit to be available 3,066 hours per year, at a price to be paid in fixed capacity, dollars per kilowatt ("\$/KW"), payments only (Place Affidavit at 3-5). BECo made three different scoring decisions with respect to Concord's proposal. First, BECo eliminated all of the 20 points that Concord had claimed for full dispatchability. Second, BECo reduced Concord's price score by 41.5 points for reasons related to the proposed unit's hours of operation. Third, BECo eliminated the 10 points that Concord had claimed for fuel supply (Concord Petition at 1-2; BECo Memorandum at 9-11). Concord challenges all three scoring actions.

B. Dispatchability

1. Introduction

BECo's RFP 3, as approved by the Department, states, in pertinent part,

For Facilities electing to be subject to economic dispatch by BECo and/or its agents WITHOUT restriction or limitations, complete THIS section. 'MUST RUN' facilities should complete the INTERRUPTIBILITY section below....
Multiply the Percentage in Box (A) [percent of Capacity Bid subject to dispatch by BECo] by 20 points and enter the result as the Score in Item (1)

(BECo RFP 3, Response Package, Evaluation Sheet No. 12, emphasis in original).

BECo's RFP 3 defines "Dispatchable Facility" as a "facility over which NEPEX [the New England Power Exchange]¹⁰ or its designee shall have operating control and the ability to direct the dispatch based on economic as well as safety and reliability considerations, without restriction or limitation" (BECo RFP 3, Appendix B at 4).

In its proposal, Concord claimed 20 points for dispatchability. BECo scored Concord's proposal, granting it no points for dispatchability (Concord Petition at 3; BECo Memorandum at 9-11).

2. Positions of the Parties

a. Concord

Concord states, "BECo alleges that Concord is not 'dispatchable' because it was 'bid only during peak periods (3066 hr/yr),' ... when in fact Concord's proposal discloses that it was available at a 0.90 EAF [Equivalent Availability Factor] (i.e., 7,884 hours/year)," and thus is fully dispatchable (Petition at 3). Concord further contends that it arranged its fuel supply, as well as its operation and maintenance ("O&M") contract on a fully dispatchable basis¹¹ (i.d.). For these reasons, Concord argues that it was entitled to the full 20 points it claimed for dispatchability (i.d. at 2-3).

b. BECo

BECo contends that Concord's proposed unit is a "must run" unit, and therefore is

¹⁰ NEPEX directs the dispatch of virtually all electric generating units in New England, specifically those associated with the New England Power Pool ("NEPOOL" or "Nepool").

¹¹ Concord states that its O&M contract allowed for costs of operation up to 8,200 hours annually (Reilly Affidavit at 6).

not fully dispatchable.¹² BECo also contends that Concord's proposal called for its facility to operate 3,066 hours per year, which represents a severe dispatch limitation (BECo Memorandum at 9-10). BECo further states that Concord "proposed a fixed, \$/kw charge for all costs, including all fuel costs"¹³ (emphasis in original) (i.d. at 9; see also Place Response Affidavit at 4). BECo argues that

the Concord pricing mechanism in effect gives the unit must-run status. That is, since all fuel costs are treated as fixed, the variable fuel cost is zero. Nepool would therefore dispatch the unit 24 hours a day, seven days a week. This 'free' generation (which of course is not free at all, but simply has fuel costs allocated through a fixed charge) would without special Nepool restrictions displace generation from baseload units which in real life has a lower fuel cost....

The only way in which fuel cost can be converted to a fixed cost is for unit operation to be fixed at a given level.... However, if unit operation is fixed, then by definition one has a must run unit that is not dispatchable.... Concord cannot have it both ways (BECo Memorandum at 16).

For these reasons, BECo maintains that Concord did not bid a "fully dispatchable" unit.

3. Analysis and Findings

The definition of dispatchability contained in RFP 3 is not sufficiently clear to permit a straightforward resolution of this dispute, because RFP 3 does not address the difference between "must run" units and fully dispatchable units. However, the Department's Order in D.P.U. 90-270 provides a framework for addressing this issue. In the Order approving BECo's RFP 3, the Department considered in some detail how dispatchability should be valued:

¹² "Must run" units generally operate whenever they are available. In contrast, dispatchable units generally are turned on and off as the hourly need for electricity changes, depending on their variable costs compared to other dispatchable units.

¹³ BECo states that Concord's proposal includes "an insigificant variable O&M charge" (i.d. at 9).

The relevant standard is that the number of points scored should be proportional to the value that dispatchability/interruptibility adds to a project....

The ideal solution for valuing dispatchability ... is to compare production cost runs that estimate the present value of dollar savings resulting from each bid....

Since this record lacks analysis of how the value of dispatchability changes with variable cost and hours of operation, we allow the Company's estimate of the value of dispatchability to stand at 20 points. However, we order the Company, in its first ILM filing, to allow different scores for dispatchability, based on expected variable costs of bid facilities (and the characteristics of the Company's system).

Boston Edison Company, D.P.U. 90-270, at 175, 177 (1991).

In RFP 3, the Department allowed BECo to award 20 points for dispatchability, based on the costs not incurred, by not dispatching a unit with a variable price equal to BECo's avoided cost, during more than 6,000 hours per year. Id. at 176. Accordingly, points commensurate with a project's value would, in this case, necessarily reflect the project's variable cost and hours of operation. A unit's dispatchability value increases as the unit is not dispatched, so that its variable costs are not incurred, and consequently the utility and, in turn, its ratepayers save money. The "dispatchability" score is thus intended to reflect the economic value that a dispatchable unit would provide to the electric company's system.

Assigning value in the scoring system in a manner that does not correspond to the unit's actual value to ratepayers would be inconsistent with maximizing net benefits to ratepayers. See 220 C.M.R. 8.05(5)(c). Moreover, doing so would compromise the important goal of treating all project sponsors equitably. Destec at 13-14. In this case, the proposed project offers no variable fuel cost, so BECo would save almost nothing by not dispatching the project, thus impairing the unit's value to ratepayers. Such value was the explicit basis on which the Department allowed BECo to award points for dispatchability.

For scoring purposes, the project's cost characteristics show that the project has no more economic value to ratepayers than a unit that is not dispatchable. Therefore, the Department finds that Concord has not shown that BECo's adjustment to Concord's Dispatchability score was unreasonable.

C. Price Scoring

1. Introduction

BECo's RFP 3, as approved by the Department, provides that a "Sponsor's Price Bid may be comprised of \$/KW-YR [\$per kilowatt-year] rates and/or ¢/kWh [cents per kilowatt-hour] rates, however, the use of \$/KW-YR rate is reserved for Dispatchable Facilities" (BECo RFP 3, at A-2). RFP 3 provides that

\$/KW-YR or \$/KW-MO [\$/kilowatt-month] components of a Sponsor's Price Bid ... must be converted to an equivalent ¢/KWH rate in order to calculate Sponsor's Price Factor Score. The calculation required to convert from \$/KW rates to ¢/KWH rates is established below and is based on an assumed 90% equivalent availability factor ["EAF"]

$$\text{¢/kWh} = \frac{(\$/\text{KW/Year})}{\text{Period Hours} \times 0.90} \times 100$$

(i d. at A-4 and A-5).

Concord proposed a fixed \$/KW charge that included all fuel costs (BECo Memorandum at 9). BECo reduced Concord's claimed price score by 41.5 points, by recalculating Concord's score with 3,066 hours per year as the Period Hours in the above formula, instead of the 8,760 hours (and 90 percent EAF) that Concord had used (BECo Memorandum at 13).

2. Positions of the Parties

a. Concord Energy

Concord's bid proposed a fixed \$/KWh charge without a variable fuel charge, since its gas supply contract established a total, fixed fuel cost (Place Response Affidavit at 4; BECo Memorandum at 9). To calculate its price score, Concord divided the fixed charge by 7,884 hours per year (90 percent of all 8,760 hours in the year) to arrive at a ¢/KWh price, in accordance with instructions from BECo (Petition at 2)¹⁴.

Concord contends that, in following the requirements established in RFP 3 and in subsequent correspondence with BECo (the December 30 Letter), Concord was entitled to the price score it claimed (i.d. at 2-3). Concord argues that it followed BECo's instructions in the December 30 Letter to divide the annual equivalent of its proposed fixed charge (\$/KWh-yr) by the Period Hours, which BECo clarified in writing to Concord should be 8,760 hours in a year, multiplied by a 0.90 EAF (i.d. at 2-3; Lupfer Affidavit, Attachments 1-10). Concord asserts that BECo, in effect, declared its own scoring formula incorrect after all bids were in, and then applied another, unpublished, price scoring formula (i.d. at 3).

¹⁴ The instructions are contained in a December 30, 1991 Letter ("December 30 Letter") from Paul Vaitkus of BECo to Daniel Lupfer of Place Associates, Concord's consultant (Place Affidavit, Attachment 2). BECo's December 30 Letter responded to a December 18, 1991 Letter from Mr. Lupfer, which had sought "a definition of 'Period Hours' in the denominator of the equation, ... as it pertains to a peaking facility" that may operate much less than 8,760 hours per year (i.d., Attachment 1).

BECo's December 30 Letter replied that RFP 3 requires that \$/kWh-yr be converted into ¢/kWh using a 90 percent EAF "over an annual period (8760 hrs/yr).... All project proposals, regardless of operational mode, must use the 0.9 EAF and 8760 hours when converting from \$/kw-yr to ¢/kwh" (i.d., Attachment 2).

b. BECo

BECo claims that Concord, when asking BECo how to calculate the standard price score, failed to disclose (1) that it intended to recover its fuel and other variable costs through a fixed price mechanism and (2) that its unit had a dispatch limitation (BECo Memorandum at 9-11, 13). BECo further claims that Concord's failure to disclose this information affected the answer it gave Concord in the December 30 Letter (i.d. at 10). BECo claims that it rescored Concord's bid because (1) Concord offered only 3,066 hours of dispatchability, and (2) when BECo's scoring system was applied to the Concord project, the resulting score bore no relation to the true economic value of the Concord project, since the annual payments Concord used to calculate the Price Factor Score were far lower than the actual payments would be (i.d. at 9-10).

Therefore, BECo indicated that in order to match Concord's Price Factor score to the true economic value of the project, BECo reassessed Concord's Price Factor score using actual payments (from Concord's pro forma financial statement), which resulted in a 41.5 point reduction (Kilgoar Affidavit at 7-8). Accordingly, BECo states that it reduced Concord's price score by 41.5 points (BECo Letter to Concord, May 19, 1992).

3. Analysis and Findings

The Department's QF regulations state:

[T]he ranking formula adopted by the utility must recognize continuous trade-offs in net ratepayer benefits between various measurable criteria used to score Project Proposals. The ultimate goal of the utility's ranking formula must be to maximize net benefits to ratepayers.

220 C.M.R. § 8.05(5)(c).

The Department seeks to implement and oversee a solicitation process that treats

project sponsors fairly and ensures that the interests of ratepayers are protected. The Department approved BECo's RFP 3 with the important objective in mind of maximizing economic value to ratepayers.

Project economics are a critical part of a decision about which projects are selected for an award group. In our review of an RFP price scoring formula, the Department seeks to ensure that the economic value of each proposal will be reflected in the scoring process without imposing unduly rigid pricing criteria. The Department sought to ensure this result by approving the price provisions of BECo's RFP, including the provision that, for dispatchable projects, \$/KW price bids would be converted to ¢/KWH by dividing by the hours in the period.

The Department notes that Concord's scoring of its project appears to be consistent with the technical instructions set forth in BECo's December 30 Letter.¹⁵ However, the Department agrees with BECo that Concord's variable fuel cost price proposal of zero made Concord's use of 7,884 hours in the formula inappropriate, because it would not enable BECo to establish the true economic value of Concord's proposal. In light of this dilemma, BECo acted appropriately by (1) recognizing the actual effect of Concord's price proposal on ratepayers, and (2) adjusting Concord's score to reflect the true value of the project. Stated differently, it would have been unreasonable for BECo (1) to ignore the inconsistency between Concord's claimed price score and the actual payments from its pro forma financial statement, and (2) to accept Concord's claimed price score, because it was not based on

¹⁵ We note that the Department approved RFP 3 but did not approve (nor need to approve) the December 30 Letter from BECo regarding application of RFP 3 instructions.

Concord's proposed period of operation, 3,066 hours per year. Accordingly, the Department finds that, given the circumstances and recognizing the actual benefits that the Concord project offers to ratepayers, Concord has not shown that BECo's adjustment to Concord's Price Factor score was unreasonable.

D. Fuel Supply

1. Introduction

BECo's RFP 3 provides a maximum of 10 points for the Fuel Supply score. RFP 3 indicates that 10 points would be awarded to a project proposal with firm, 365-days-per-year fuel transportation and supply arrangements over the entire contract term (BECo RFP 3, Evaluation Sheet No. 11). RFP 3 provides that a Letter of Intent, rather than a firmer commitment, would earn a score of only 1 point for Fuel Supply (i.d.). The terms of RFP 3 do not address the situation in which a developer has letters of intent for some stages of fuel supply, but firmer commitments for other stages.

Concord claimed a full score of 10 points (Petition at 1, 3). BECo reduced that score to 0 points, claiming that Concord had not supplied even letters of intent for several pieces of the fuel transportation route (BECo Memorandum at 20; Petition at 1).

2. Positions of the Parties

a. Concord

Concord states that, when it submitted its proposal, it had contracted for fuel supply from Novalta for 60 billion cubic feet ("BCF") of gas (with an option for 115 BCF more), as well as firm transportation on the Nova pipeline out of the province of Alberta, Canada (Place Affidavit at 8). Concord adds that it had filed with TransCanada Pipeline

("TransCanada") for firm transportation arrangements and that it had negotiated letters of intent with two gas pipelines, Colonial Gas Company ("Colonial") and Tennessee Gas Pipeline Company ("Tennessee") (which Concord said it would not file until BECo announced its award group) (i.d.). Concord asserts that all fuel supply and transportation arrangements were to be for firm service for 20 years (i.d.). Concord states that it provided BECo with the fuel supply and Nova transportation contracts in its project proposal package and made the remaining information available (i.d.).

Concord disputes BECo's allegation that only half of Concord's annual fuel and transportation are under contract (Petition at 3). Rather, Concord asserts that its proposal shows that all of the annual fuel (175 BCF of natural gas, including 60 BCF prepaid) and transportation were under contract (i.d.; Reply Response Affidavit at 4).

b. BECo

BECo contends that Concord failed to include any of the fuel transportation agreements as supporting documentation for the gas transportation to the facility, as required by the RFP (BECo Memorandum at 20). BECo further alleges that the Place Affidavit asserts that letters of intent for transportation had been negotiated but not filed (i.d., citing Place Affidavit at 8). In addition, BECo claims that Concord had a fuel supply adequate to support the unit's operation for 3,066 hours per year, not the 365-day supply necessary to earn 10 points (i.d. at 21).

3. Analysis and Findings

As approved by the Department on October 9, 1991, Section 4.3.6(b) of RFP 3, states

The support documentation provided... [with the original proposal] ... must, in all cases, contain information in sufficient detail to allow BECo to unequivocally confirm the representations made by Sponsor in its Project Proposal. It is the Sponsor's sole responsibility to provide documentation meeting the standards described above, and BECo is under no obligation to request additional documentation if the submitted documentation is insufficient in BECo's judgement.

Concord has not denied BECo's allegation that it did not include fuel transportation agreements. Indeed, Concord admits that it did not file letters of intent for the TransCanada, Tennessee, and Colonial segments of the fuel transportation arrangements, which would have entitled it to at least 1 point (RFP 3, Evaluation Sheet 11).

From the information submitted by Concord, it appears that Concord did not file documentation sufficient for BECo to confirm that Concord had contracted fuel transportation for 3,066 hours for each year of the contract term. Instead, it appears that Concord presented a consummated contract for fuel supply and one letter of intent for fuel transportation, but did not supply BECo with supporting documentation for three of the four legs of the gas transportation needed to supply the proposed facility. Without Concord's supporting documentation, as required by Section 4.3.6(b) of the RFP, BECo was justified in asserting that it could not "unequivocally confirm" Concord's representations. Accordingly, the Department finds that Concord has not shown that BECo's adjustment to Concord's Fuel Supply score was unreasonable.

I V. ORDER

Accordi ngly, after due noti ce and consi derati on, i t i s

ORDERED: That the peti ti on of Concord Energy Corporati on fi led wi th the Department on June 9, 1992, and suppl emented on June 26, 1992, be and hereby i s DENI ED.

By Order of the Department,